In the High Court of Punjab and Haryana at Chandigarh.

Regular Second Appeal No.1479 of 2006.

Date of decision:11.12.2006.

Kamla Devi and another.

...Appellants.

Versus

Daulat Ram.

...Respondent.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.Parveen Kumar Advocate for the appellants.

...

Judgment.

S. N. Aggarwal, J.

Kamla Devi is the sister of Daulat Ram,respondent while Bhagat Ram is the husband of Kamla Devi,appellant.

The respondent had filed a civil suit against the appellants for possession of house situated in Mohalla Ranjit Nagar, Fatehgarh, Hoshiarpur on the plea that he was the owner of the said house and it was in illegal possession of the appellants.

The said suit was contested by the appellants. They had taken the plea that they had become owners by adverse possession. Plea was also taken that the house was constructed by the appellants by

spending money from their own pocket.

Issues were framed.

The parties led evidence.

The learned trial Court decreed the suit of the respondent vide judgment and decree dated 27.7.2004 and the appellants were directed to hand over the vacant possession of the house in dispute to the respondent.

The appellants had filed an appeal against the said judgment. The learned Lower Appellate Court up-held the findings of fact recorded by the learned trial Court and dismissed the appeal vide judgment and decree dated 18.8.2005.

Hence, the present appeal.

The submission of learned counsel for the appellants was that the respondent has failed to prove the sale deed. He was not the owner. It was further submitted that the attesting witness of the sale deed has not been examined. Therefore, the sale deed has not been proved by the respondent in accordance with law.

This submission has been considered. It has no merit at all. The statement of marginal witness is necessary only if the execution of the sale deed is denied by its executant. Mere denial by the appellants regarding sale deed in favour of the respondent is of no consequence,as they are not the executants. Therefore, the non-examination of attesting witness of the sale deed does not affect the legality and validity of sale deed. It was noticed by the learned trial Court that a

copy of sale deed dated 22.12.1983 has been placed on the file as Exhibit P-3. Even Kamla Devi appellant has admitted in her statement that the respondent was the owner as per sale deed although she has pleaded that the sale consideration was met out by her from her own income. The appellants have not been able to produce any evidence to show if the sale consideration of sale deed dated 22.12.1983 was made available by Kamla Devi, appellant. Therefore, the respondent is proved to be the owner of the suit property.

The learned counsel for the appellants submitted that the appellants have become owners by way of adverse possession. This plea has been rejected by both the Courts below and there is no circumstance on the file for up-setting the said finding.

The next submission of learned counsel for the appellants was that they have spent money on raising construction.

The appellants have not led any evidence to prove that they had met out the expenditure on raising of construction on suit land which was purchased by the respondent. Therefore, this submission also is of no consequence.

Both the Courts below have recorded concurrent findings of fact that the respondent is the owner of the suit property and he was entitled to its possession . The appellants were accordingly directed to hand over the vacant possession of the house to the respondent.

Faced with this situation, the learned counsel for the appellants submitted that the appellants be given some time to vacate

the premises. After all, the appellants are sister and sister's husband of the respondent. They are living in the house for the last many years. They have to find out a house in which they have to shift. Therefore, the appellants are granted about eight months' time to vacate the house which will be upto 31.8.2007. However, the appellants must give a written undertaking in the executing Court upto 15.1.2007 that they would vacate the house in dispute on or before 31.8.2007. If the appellants fail to furnish the undertaking, the respondent would be entitled to get the possession of the house in accordance with law.

This appeal is disposed of in the above terms.

December 11,2006. (S. N. Aggarwal)
Jaggi Judge